**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL STAMP NO.14741 OF 2007**

Rukhmini Jagannath Pable and others .. Appellants
v/s.
Ramesh Popat Pable and others .. Respondents

Mr. M.M. Sathaye for the appellants.
Mr. Hardas i/by Mr. P.N. Joshi for the respondent No.8.

**CORAM : ABHAY S. OKA, J.**
**DATED : 29TH NOVEMBER, 2007**

**P.C.**

Heard the learned advocate appearing for the appellants.

2. The appeal is by unsuccessful plaintiff Nos.2A to 5. The first plaintiff Pandurang died after the appeal was decided by the first appellate court. According to the case of the appellants, the first plaintiff Pandurang was residing at Bombay on account of his employment. His other brothers Jagannath and Dashrath were minors. On 7th May, 1952, a lease was created in respect of the suit land in favour of the father of the first respondent and the lessee was put in possession. It is

alleged that after expiry of the period of lease deed, the lessee delivered the possession of the suit land to the plaintiffs. However, name of the lessee continued to be in the record of rights. It is stated that the first plaintiff came to know that the defendants have forcibly took possession of the suit premises by taking undue advantage of the revenue record in their favour. After verifying the record, the first plaintiff Pandurang came to know that the lessee had fraudulently got executed the sale deed dated 24th December, 1952. Therefore, the suit was filed for declaration that the sale deed is null and void and not binding on the plaintiffs. The consequential relief was of a decree for possession.

3. The trial court dismissed the suit. One of the reasons recorded by the trial court is that the suit is not filed within limitation. In appeal preferred by the original plaintiffs, the decree of the trial court has been confirmed.

4. The submission of the learned advocate for the appellants is that the finding on the issue of limitation is erroneous as the plaintiffs had never admitted the execution of the sale deed dated 24th December, 1952. It is submitted that according to the case of the appellants, what was executed was

a lease for a period of 10 years and in fact, on expiry of the period of lease, the plaintiffs were put back in possession. He, therefore, submitted that the finding on the ground of limitation is erroneous and it is clearly established that the document of sale deed was a fictitious document.

5. I have carefully considered the submissions. The finding recorded by the trial court is on the basis of the statement made by the first plaintiff Pandurang in his evidence. The said statement is that he was made known by the revenue authorities in the year 1963-64 that he had executed the sale deed in respect of the suit land in favour of the father of the first respondent on 24th December, 1952. The suit has been instituted on 26th July, 1982. Therefore, the trial court held that the first plaintiff had knowledge in the year 1963-64 of the sale deed executed on 24th December, 1952. The other plaintiffs did not enter the box to prove that they were not aware of the execution of the sale deed.

6. The said finding on the ground of limitation has been confirmed by the appellate court. The appellate court also noted that in 1963-64, the first plaintiff Pandurang was aware that the father of the first respondent was claiming that the sale deed

was executed on 24th December, 1952. The finding of bar of limitation is based on the evidence led by first plaintiff Pandurang himself. The courts below have found that the suit was filed long after expiry of 3 years from the date on which the first plaintiff came to know about the existence of the alleged sale deed. There is no reason to interfere with the concurrent findings recorded on the issue of limitation. No substantial question of law arises. Appeal is dismissed with no order as to costs.

**ABHAY S. OKA, J.**